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2 **UNITED STATES DISTRICT COURT**  
3 **SOUTHERN DISTRICT OF CALIFORNIA**  
4

5 JANET CARROL,

6 Plaintiff,

7 vs.

8 DAVID JENKINS, NEXT PROTEINS, INC.,  
9 and DOES 1–10,

10 Defendant.

CASE NO. 12CV279 JLS (BLM)

**ORDER RE: NOTICE OF  
DISMISSAL WITHOUT  
PREJUDICE THIRD CAUSE OF  
ACTION ONLY**

(ECF No. 3)

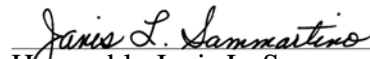
11 On February 3, 2012, Plaintiff Janet Carrol filed a notice of dismissal without prejudice  
12 third cause of action only, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). (Notice,  
13 ECF No. 3)

14 Voluntary dismissal is governed by Federal Rule of Civil Procedure 41. Plaintiffs may  
15 voluntarily dismiss actions without a court order before the opposing party serves an answer or  
16 motion for summary judgment, or with the opposing party's consent. Fed. R. Civ. P. 41(a)(1)(A).  
17 However, the Ninth Circuit has held that a voluntary dismissal may not be used to dismiss fewer  
18 than all claims against a single defendant. *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389,  
19 1392 (9th Cir. 1988). Instead, Rule 15(a) is the appropriate mechanism by which a plaintiff may  
20 eliminate an issue, or one or more but less than all of several claims, without dismissing as to any  
21 of the defendants. *Id.* (citing 5 J. Moore, L. Lucas & J. Wicker, *Moore's Federal Practice*  
22 ¶ 41.06-1 at 41-83 to -84 (1987)).

23 Accordingly, the Court *sua sponte* denies Plaintiff's notice of voluntary dismissal of the  
24 third cause of action without prejudice to Plaintiff amending her complaint pursuant to Rule 15(a).

25 **IT IS SO ORDERED.**

26 DATED: February 6, 2012

27   
28 Honorable Janis L. Sammartino  
United States District Judge